

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE GROUND WATER PROTECTION ACT TO PROVIDE FOR EXPENDITURES FROM THE CORRECTIVE ACTION FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-6B-7 NMSA 1978 (being Laws 1990, Chapter 124, Section 7, as amended) is amended to read:

"74-6B-7. CORRECTIVE ACTION FUND CREATED--AUTHORIZATION FOR EXPENDITURES.--

A. There is created the "corrective action fund". The fund is intended to provide for financial assurance coverage and shall be used by the department to the extent that revenues are available to take corrective action in response to a release, to pay for the costs of a minimum site assessment in excess of ten thousand dollars (\$10,000), to pay the state's share of federal leaking underground storage tank trust fund cleanup costs as required by the federal Resource Conservation and Recovery Act and to make payments to or on behalf of owners and operators for corrective action taken in accordance with Section 74-6B-13 NMSA 1978. The legislature may appropriate up to thirty percent of the annual distribution to the fund pursuant to Section 7-1-6.25 NMSA 1978 to the department to match federal funds, for underground contamination cleanup, and to address water needs. The owner

or operator of a site shall not use the corrective action fund as evidence of financial assurance to satisfy claims of third parties.

B. The board, after recommendations from the storage tank committee, shall adopt rules for establishing priorities for corrective action at sites contaminated by storage tanks. The priorities for corrective action shall be based on public health, safety and welfare and environmental concerns. In adopting rules pursuant to this subsection, the board shall follow the procedures of Section 74-4-5 NMSA 1978. The provisions of that section relating to all other matters in connection with the adoption of rules shall apply. The department shall establish priority lists of sites in accordance with the rules adopted by the board.

C. The department shall make expenditures from the corrective action fund in accordance with rules adopted by the board or the secretary for corrective action taken by the state, owners or operators at sites contaminated by storage tanks; provided that:

(1) payments may be made only for corrective action taken by persons qualified by the department to perform the work pursuant to rules adopted by the board;

(2) no expenditures from the fund shall be paid to or on behalf of an owner or operator for corrective action, other than a minimum site assessment or sampling, if

the corrective action is conducted by a person that is a subsidiary or parent of or that is otherwise affiliated with the owner or operator;

(3) expenditures shall be made by the department to perform corrective action, to pay for the costs of minimum site assessment in excess of ten thousand dollars (\$10,000) or to make payments to or on behalf of an owner or operator in accordance with Section 74-6B-13 NMSA 1978;

(4) any corrective action taken shall be taken at sites in the order of priority appearing on the priority lists, unless an emergency threat to public health, safety and welfare or to the environment exists;

(5) when available revenues are limited and the fund can no longer be approved as a financial responsibility mechanism, priorities for expenditures from the fund shall also be based on financial need as determined by rules adopted by the board; and

(6) corrective action involving remediation shall follow a competitive bidding procedure based on technical merit and cost effectiveness.

D. No expenditure from the corrective action fund shall be authorized for corrective action at sites owned or operated by the United States or any agency or instrumentality thereof.

E. Nothing in this section authorizes payments for

the repair or replacement of a storage tank or equipment.

F. Nothing in this section authorizes payments or commitments for payments in excess of the funds available.

G. The board, by rule, may provide for a specific amount to be reserved in the fund for emergencies. The amount reserved may be expended by the department only for corrective action necessary when an emergency threat to public health, safety and welfare or to the environment exists.

H. Within sixty days after receipt of notification that the corrective action fund has become incapable of paying for assured corrective actions, the owner or operator shall obtain alternative financial assurance acceptable to the department."
